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Singapore Management University

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# How have sexual predators thrived in the workplace?

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*A chronic failure of HR management needs to be corrected*

Sexual harassment is a serious issue wherever and whenever it happens, but when it occurs in an organisational context it also becomes a serious health and safety hazard for employers.

The historic failure by companies and individuals responsible for employee wellbeing to address sexual harassment has been brought into sharp focus since American movie mogul Harvey Weinstein was exposed as a serial offender in early October, 2017.

Women's experience of sexual harassment and intimidation is hardly something new, but it goes to the heart of gender politics, particularly as it's played out in the workplace.

According to **Bianca Fileborn**, a lecturer in criminology in the school of social sciences at UNSW, one of the underlying causes of sexual violence and sexual harassment is gender inequality.

"We need to be looking at broader issues, such as the pay gap and treatment of women in the workplace – these are part of that broader cultural background that enables sexual harassment and sexual violence to happen," Fileborn says.

The context of the recent sexual harassment allegations has been the workplace – not just Hollywood, but the media, academe and government have thrown up cases of misconduct that has become almost institutionalised, or at least tacitly accepted through people turning a blind eye.

The accusers have cut across traditional class divisions – high-powered women as well as women in low-income, service industry jobs have come together in the #MeToo campaign to air their grievances, enabled by the power and reach of social media.

"Social media has played a hugely important role in all of it," says Fileborn.

"That said, this is happening after decades of feminist activism around sexual harassment and sexual violence that has really laid the groundwork for all of this. But social media has influenced power dynamics by creating spaces and platforms for people to share their experiences."

## Easier 'not to know'

Social media may also have put paid to the days when an employee made an allegation to HR, and HR took time to investigate it while keeping it under wraps until a resolution had been arrived at.

Now HR and other senior managers are caught on the back foot wondering what to do when employees are conversing in anonymous workplace chat rooms such as Blind – or, like Uber engineer Susan Fowler, posting on a public blog about the sexual harassment they faced at work.

When news finally breaks, often we discover there were people in authority who knew about the harassment, but really wished that they didn't.

"There is no doubt that senior management are put in a difficult position when cases like this arise," says Karin Sanders, a professor and head of the school of management at UNSW Business School.

"How to handle a situation about which not everyone will know all the facts, and where it boils down to one person's word against another's word, isn't easy.

"Sometimes the feeling is it's better not to know, it makes it a lot easier. On the other hand, it is a brave action to stand up and tell people [who are your bosses] what is allowed and not allowed," says Sanders.

Nevertheless, that is exactly what the Australian HR Institute (AHRI) insists professional HR practitioners should be doing.

Writing in The Sydney Morning Herald, AHRI CEO Lyn Goodear acknowledged that by standing up for fairness and natural justice on behalf of employees, HR managers may well put their careers in jeopardy.

"Chief human resource officers who find themselves reporting to chief executives who demand that their senior executives put allegiance to them above allegiance to the organisation, need to exercise the full range of their professional skills. That includes the capacity to be persuasive and, when required, to be brave," says Goodear.

## **Drawing the boundaries**

Fileborn suggests the prevailing view at the moment is that HR "is there to actually protect the organisation rather than to support employees".

"Having these public allegations made against your organisation is a very, very bad look. I think it's perhaps seen as the path of least resistance to manage out the person who is making the complaint," she says.

"There's a UK academic called Sara Ahmed and she has this great quote, which I'll paraphrase, but it's along the lines of, 'if you're the person who points out a problem, you become the problem'. You become the thing that has to be managed instead of the problem itself," says Fileborn.

Sanders says that more often than not, "women blame themselves or are not assertive enough to report sexual misconduct to HR and end up leaving the organisation instead".

Organisations should always have a code of conduct that explicitly draws the boundaries around behaviour and this should be enforced, she says.

Victims and witnesses of abuse need to know how to use a reporting process that encourages filing complaints and removes any fear of retaliation through no-tolerance policies. HR has a duty to respond to, and follow up on, complaints and conduct an investigation, if necessary.

"For instance, at UNSW we know if you have an affair with a student you need to report it. If it goes further and is deemed to be harassment, we have an employee assistance program to seek advice that is an independent, external service," Sanders says.

At the Weinstein company, employees had no such recourse. Although the board of directors and Harvey Weinstein's producer brother Bob had known about the sexual misconduct for at least two years, following detailed accusations from former employee Laura O'Connor, Weinstein shut it down by reaching a settlement with O'Connor and the rest of the board clearly considered the matter 'case closed'.

Non-disclosure agreements (NDAs) that pay off accusers and protect the identity and culpability of the accused have prevented progress in the US. In Pennsylvania, state legislators have proposed a bill to ban sexual misconduct NDAs, hoping to curtail some of those actions.

In Australia, it is unlawful for an employee to be intimidated, insulted or humiliated because of their sex or sexuality.

"But these incidents are designed to be conciliated away from the public eye, so our knowledge that they have happened [and the outcomes] are seriously limited," says Rick Sarre, an adjunct professor at University of South Australia, writing for The Conversation.

"There is a strong case for making conciliated outcomes more publicly available, while respecting the privacy of the parties concerned."

## **A watershed moment**

Privacy isn't the only casualty when a sexual harassment case blows up inside an organisation. Like the ripples caused by a stone plunged into a pool, the effects extend far beyond the protagonists.

Two academics at University of Texas at Arlington have revisited workplace sexual harassment issues after an initial study they completed 20 years ago.

M. Ann McFadyen and James Quick have found that though there has been a 28% decline in complaints in the US, sexual harassment is a continuing, chronic occupational health problem in the workplace.

"Sexual harassment in the workplace is costly, not just to the organisation," McFadyen says.

"The behaviour impacts [on] the victim, the aggressor, bystanders, customers, suppliers and other stakeholders in terms of tarnished reputations and trust, disengaged employees, decreased commitment, turnover, depression, stress, eating and other health disorders, and in extreme cases bodily harm, even death."

McFadyen believes that the recent publicity regarding sexual harassment is a watershed moment for workplaces that could usher in new and different types of training.

"Training not only for leaders and management but employees at all ranks, customers, suppliers and other stakeholders," she says. "Successful leaders and management of organisations cannot afford to simply maintain the status quo."

Both researchers believe there is a real need from a public health perspective to know more about the aggressors' use of power in sexual harassment cases.

They say that if a workplace is equipped with this information, surveillance indicators and systems can be put into place to address a preventable occupational health problem.

While accusations against high-profile individuals have served to keep the issue in the public eye, the hope now is that for the vast majority of ordinary women – and, indeed, males as well – the workplace can start to become a safer and less hazardous place.

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